

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

8 JIMMY CLARK,

9 Plaintiff,

10 vs.
11

12 TIMOTHY RASMUSSEN, et al.,

13 Defendants.
14

NO. CV-09-375-JLQ

ORDER TO DISMISS

15 **BEFORE THE COURT** is Mr. Clark's Complaint (Ct. Rec. 4) alleging that there
16 are no valid judges in the State of Washington by virtue of their alleged failure to timely
17 take and file the oath of office, a failure to act which necessarily vacates judgeships
18 under Washington law. *See* RCW 42.12.010(6). Mr. Clark's Complaint arises from two
19 Stevens County Superior Court civil actions in which he has sought to compel the
20 Stevens County prosecutor to investigate and prosecute alleged crimes committed by
21 others.

22 The principle of abstention applies. This principle was first articulated in a
23 criminal context by the Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971), and
24 later extended to civil proceedings by *Middlesex County Ethics Comm. v. Garden State*
25 *Bar Ass'n*, 457 U.S. 423, 432 (1982). "So long as the constitutional claims of
26 respondents can be determined in the state proceedings and so long as there is no
27 showing of bad faith, harassment, or some other extraordinary circumstance that would
28 make abstention inappropriate, the federal courts should abstain." *Middlesex*, 457 U.S.

1
2 at 435. Mr. Clark's claim has not been exhausted within the state courts of Washington,
3 and this federal court will not serve as an appellate court thereof. Accordingly,

4 **IT IS HEREBY ORDERED:**

5 1. The Complaint (Ct. Rec. 4) is hereby **DISMISSED** without prejudice pursuant
6 to Fed. R. Civ. P. 12(b)(6), and may not be re-filed until and if Mr. Clark's state
7 remedies, including resolution by the Washington Supreme Court, have been fully
8 exhausted.

9 2. Mr. Clark is cautioned that, while the court is not reaching the merits of the
10 instant action, frivolous filings not grounded in law and fact may lead to sanctions or the
11 entry of a vexatious litigant Order.

12 The Clerk is hereby directed to enter this Order, enter judgment dismissing the
13 Complaint and the claims therein without prejudice, close the case file, and furnish
14 copies to Mr. Clark.

15 **DATED** this 22nd day of December, 2009.

16 s/ Justin L. Quackenbush
17 JUSTIN L. QUACKENBUSH
18 SENIOR UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28